

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
<b>Louis Martinez Family Group, LLC</b>	)	Facility ID No. 64992
	)	NAL/Acct. No.0941420009
Licensee of Station KQUX-CA	)	FRN: 0009605437
Austin, Texas	)	

**FORFEITURE ORDER**

**Adopted: May 3, 2010**

**Released: May 4, 2010**

By the Chief, Video Division, Media Bureau:

**I. INTRODUCTION**

1. In this Forfeiture Order (“Order”) we issue a monetary forfeiture in the amount of nine thousand six hundred dollars (\$9,600) to Louis Martinez Family Group, LLC (“Licensee”), licensee of Station KQUX-CA, Austin, Texas (“Station”), for its willful and repeated violation of Section 73.3526(e)(11)(iii) of the Commission’s Rules (“Rules”)<sup>1</sup> by failing to place in the Station’s public inspection file and publicize the existence and location of the Station’s Children’s Television Programming Reports.

**II. BACKGROUND**

2. On April 3, 2006, Licensee filed an application to renew the license of the Station (“Application”) (File No. BRTVA-20060403CCQ).<sup>2</sup> Section IV, Question 3 of the license renewal application form, FCC Form 303-S), requests that the licensee certify that the documentation required by Section 73.3526 of the Rules has been placed in the station’s public inspection file at the appropriate times. Licensee indicated “No” to that certification, explaining in an Exhibit that its TV issues/programs lists were incomplete. In addition, Licensee indicated that its Children’s Television Programming Reports for 2001 and 2002 were missing from its public inspection file. Licensee also reported that its Children’s Television Programming Reports for the first quarter of 2003 through the fourth quarter of 2005 were late-filed with the Commission. Further, Licensee stated that since these reports were not timely filed, it did not publicize the existence and location of the reports. Licensee asserted that it took steps to ensure future compliance.

3. On December 23, 2008, the Bureau issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of twelve thousand dollars (\$12,000) to Licensee for its violations.<sup>3</sup> In response to the NAL, Licensee filed a Response to Notice of Apparent Liability (“Response”) on March 2, 2009. In its Response, Licensee argued that (1) it is financially unable to pay the proposed forfeiture; and (2) it has a history of overall compliance with the Commission’s Rules. For these reasons, Licensee contended that cancellation or reduction of the forfeiture is warranted.

<sup>1</sup> See 47 C.F.R. § 73.3526(e)(11)(iii).

<sup>2</sup> On August 27, 2001, the Commission granted Licensee’s license application to convert its LPTV facilities to Class A facilities. (BLTVA-20010706AAX).

<sup>3</sup> *Louis Martinez Family Group, LLC*, 23 FCC Rcd 17899 (MB 2008).

### III. DISCUSSION

4. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,<sup>4</sup> Section 1.80 of the Rules,<sup>5</sup> and the Commission's *Forfeiture Policy Statement*.<sup>6</sup> In assessing forfeitures, Section 503(b)(2)(D) of the Act requires that we take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.<sup>7</sup>

5. Regarding Licensee's claim of financial hardship, the Commission will not consider reducing or canceling a forfeiture in response to inability to pay unless the licensee submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting principles ("GAAP"); or (3) some other reliable and objective documentation that accurately reflect the licensee's current financial status. Here, Licensee has provided a declaration under penalty of perjury, which includes a statement indicating that during the times that the Station has been on the air since 2006, it has aired programming from MTV Networks. The declaration indicates that "[t]he agreement with MTV networks allows the station to sell commercial availabilities in the programming but provides for no cash compensation either to or from the station." We find this information alone is an insufficient basis on which to assess Licensee's inability to pay.<sup>8</sup> Accordingly, in the absence of sufficient information to support a decision to the contrary, we decline to cancel or reduce the proposed forfeiture on the basis of inability to pay.

6. We have considered Licensee's response to the NAL in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Licensee willfully<sup>9</sup> and repeatedly<sup>10</sup> violated Section 73.3526(e)(11)(iii) of the Rules. However, given Licensee's history of compliance with the Rules, we reduce the forfeiture amount to \$9,600.

### IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.283 and 1.80 of the Commission's Rules,<sup>11</sup> that Louis Martinez

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<sup>4</sup> 47 U.S.C. § 503(b).

<sup>5</sup> 47 C.F.R. § 1.80.

<sup>6</sup> *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

<sup>7</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>8</sup> *See A-O Broadcasting Corp.*, Memorandum Opinion and Order, 20 FCC Rcd 756, 759 (2005) (finding that licensee failed to provide sufficient information needed to evaluate an inability to pay claim); *Frank Neely*, Memorandum Opinion and Order, 22 FCC Rcd 1434, 1434 (EB 2007) (same); *Pang Cheng*, Memorandum Opinion and Order, 20 FCC Rcd 2351, 2353 (EB 2005) (same).

<sup>9</sup> Section 312(f)(1) of the Act defines "willful" as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to Sections 312 and 503(b) of the Act, H.R. REP. NO. 97-765, 51 (Conf. Rep.), and the Commission has so interpreted the terms in the Section 503(b) context. *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387-88 (1991), *recon. denied*, 7 FCC Rcd 3453 (1992) ("*Southern California*").

<sup>10</sup> Section 312(f)(1) of the Act defines "repeated" as "the commission or omission of [any] act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(1). *See also Southern California*, 6 FCC Rcd at 4388 (applying this definition of repeated to Sections 312 and 503(b) of the Act).

<sup>11</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

Family Group, LLC, SHALL FORFEIT to the United States the sum of nine thousand six hundred dollars (\$9,600) for willfully and repeatedly violating Section 73.3526(e)(11)(iii) of the Commission's Rules.

8. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's Rules within 30 days of the release of this Forfeiture Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>12</sup> Payment of the proposed forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced in the caption above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank—Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code).

9. Licensee's request for full payment of the forfeiture under an installment plan should be sent to: Associate Managing Director-Financial Operations, 445 12<sup>th</sup> Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>13</sup>

10. IT IS FURTHER ORDERED that copies of this Forfeiture Order shall be sent by First Class and Certified Mail, Return Receipt Requested, to Louis Martinez Family Group, LLC, 17511 Santa Rosa Road, Perris, California 92570-7760, and to its counsel, Peter Tannenwald, Esquire, Fletcher, Heald & Hildreth, P.L.C., 1300 N. 17<sup>th</sup> Street, 11<sup>th</sup> Floor, Arlington, Virginia 22209.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

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<sup>12</sup> 47 U.S.C. § 504(a).

<sup>13</sup> See 47 C.F.R. § 1.1914.